

**BOARD OF APPEALS
For
MONTGOMERY COUNTY**

**CORRECTED OPINION
PARKING WAIVER**

Stella B. Werner Council Office Building
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www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-786-B

PETITION OF MCDONALD'S USA, LLC

OPINION OF THE BOARD

(Opinion Adopted April 18, 2012)
(Effective Date of Opinion: April 27, 2012)

Case No. S-786-B seeks a modification of an existing special exception for a drive-through restaurant (McDonald's). ***The Petitioner also requests a 16-space waiver of the 29 on-site parking spaces required to be provided by Section 59-E-3.7 of the Montgomery County Zoning Ordinance.*** The subject property is Lot 3, Tremoulis Property Layhill Subdivision, located at 2207 Bel Pre Road, Silver Spring, Maryland, 20906 in the C-1 Zone.

The Hearing Examiner for Montgomery County held a public hearing on the application on January 23, 2012, closed the record in the case on February 3, 2012, and on March 2, 2012, issued a Report and Recommendation for approval of the modification.

Decision of the Board: Special Exception Modification and
Parking Waiver **Granted**, Subject
to the Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on April 18, 2012. After careful consideration and review of the record in the case, the Board made a slight change to Condition No. 9, adopts the Report and Recommendation and grants the special exception subject to the following conditions:

- 1) Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's report and in this opinion.
- 2) The Applicant must limit development on the property to a drive-in restaurant with 3,911 gross square-feet of floor area. The use may have no more than 1,149 square feet of indoor patron area.
- 3) The Applicant must provide 13 parking spaces on-site.
- 4) All previous conditions of the special exception S-786 and S-707 shall remain in full force, unless modified by the current application.
- 5) Physical improvements are limited to those shown on the site plan (Exhibit 17(b)), signage plan (Exhibit 17(f)), and landscape plan (Exhibit 17(g)) submitted with the application. The applicant must maintain in good condition the proposed landscaped areas.
- 6) The project must provide a pedestrian refuge at the end of the pedestrian crossing located on the southwest side of the drive-through lane's exit.
- 7) The project is subject to Site Plan review per §59-D-3 as required by § 59-C-4.341.2. The applicant must submit to the Board of Appeals any changes to the site, landscape and/or lighting plans stemming from the Site Plan review.
- 8) Petitioner may not post the signs it proposes until it obtains a permit therefor from DPS. A copy of the permit should be filed with the Board of Appeals. Any changes to the signage details shown on Exhibits 55, 59(a) and 59(b) must be submitted to the Board of Appeals for review following Site Plan Review by the Planning Board.
- 9) Prior approval of its building permit, the applicant must secure a cross-access easement from the owner of Lot 2, "Tremoulis Property," in order to use the proposed 434 square foot dumpster area, located on Lot 2. The cross-access easement must establish the right of the Petitioner to maintain and repair the trash enclosure as shown on the site plan Exhibit 17(b) and the Site Details Plan (Exhibit 17(f)).
- 10) Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and

handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by David K. Perdue, Vice-Chair, seconded by Stanley B. Boyd, with Walter S. Booth, Carolyn J. Shawaker and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of April, 2012.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is

each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.